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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/826,505

04/05/2001

Scott Casavant

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06/14/2005

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Patent Docket Administration
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EXAMINER

DAVIS, CYNTHIA L

ART UNIT

PAPER NUMBER

2665

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/826,505

Applicant(s)

CASAVANT, ET AL.

Examiner

Cynthia L Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/21/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 21-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/21/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over McMullan in view of Williams.

Regarding claim 1, receiving a broadcast information stream at a first data rate at a headed is disclosed in column 2, lines 5-7. Inserting one or more packets from a local information stream into the broadcast information stream to form a combined information stream is disclosed in column 2, lines 7-14, and column 1, lines 7-12 (the system is a digital transmission system, which would involve information transmitted in packet form). Transmitting the combined information stream to the user device at a second data rate is disclosed in column 2, lines 12-14. Claim 1 further specifies identifying and replacing erroneous packets received in the broadcast data stream with local information, which is missing from McMullan. However, Williams discloses in column 3, lines 52-55, replacing erroneously received packets with local information in order to hide audio impairment. It would have been obvious to one skilled in the art at the time of the invention to replace the erroneously received packets in McMullan's

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system as is taught by Williams. The motivation would be to hide impairment of the received data stream that might be caused by the erroneous packets.

Regarding claim 4, combining a broadcast information stream at a first data rate and a local information stream to form a combined information stream at a second data rate is disclosed in column 2, lines 5-9. Receiving the combined information stream at the user device is disclosed in column 2, lines 12-14. Claim 4 further specifies identifying and replacing erroneous packets received in the broadcast data stream with local information, which is missing from McMullan. However, Williams discloses in column 3, lines 52-55, replacing erroneously received packets with local information in order to hide audio impairment. It would have been obvious to one skilled in the art at the time of the invention to replace the erroneously received packets in McMullan's system as is taught by Williams. The motivation would be to hide impairment of the received data stream that might be caused by the erroneous packets.

Regarding claim 7, receiving a broadcast information stream including one or more packets unusable to the user device and inserting one or more local information packets in place of the unusable packets to form a combined information stream is disclosed in column 1, lines 7-16 (the local information in the digital transmission system may be used to replace control information from the broadcast system that is unusable by the user device). Transmitting the combined information stream to the user device is disclosed in column 2, lines 12-14. Claim 7 further specifies identifying and replacing erroneous packets received in the broadcast data stream with local information, which is missing from McMullan. However, Williams discloses in column 3, lines 52-55,

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replacing erroneously received packets with local information in order to hide audio impairment. It would have been obvious to one skilled in the art at the time of the invention to replace the erroneously received packets in McMullan's system as is taught by Williams. The motivation would be to hide impairment of the received data stream that might be caused by the erroneous packets.

Regarding claim 10, a headend coupled to the user device is disclosed in figure 1a, element 102, and column 3, line 24. A local information source and broadcast information source coupled to the headend is disclosed in column 1, lines 7-12. Receiving a broadcast information stream from the broadcast information source at a first data rate is disclosed in column 2, lines 5-7. Inserting one or more packets from a local information stream from the local information source into the broadcast information stream to form a combined information stream is disclosed in column 1, lines 7-12. Transmitting the combined information stream to the user device at a second data rate is disclosed in column 2, lines 12-14. Claim 10 further specifies identifying and replacing erroneous packets received in the broadcast data stream with local information, which is missing from McMullan. However, Williams discloses in column 3, lines 52-55, replacing erroneously received packets with local information in order to hide audio impairment. It would have been obvious to one skilled in the art at the time of the invention to replace the erroneously received packets in McMullan's system as is taught by Williams. The motivation would be to hide impairment of the received data stream that might be caused by the erroneous packets.

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Regarding claim 13, a broadcast information stream at a first data rate, a local information stream, combining the broadcast information stream and the local information stream at a second data rate, and receiving the combined information stream at the user device is disclosed in column 1, lines 7-12, and column 2, lines 5-14. Claim 13 further specifies identifying and replacing erroneous packets received in the broadcast data stream with local information, which is missing from McMullan. However, Williams discloses in column 3, lines 52-55, replacing erroneously received packets with local information in order to hide audio impairment. It would have been obvious to one skilled in the art at the time of the invention to replace the erroneously received packets in McMullan's system as is taught by Williams. The motivation would be to hide impairment of the received data stream that might be caused by the erroneous packets.

Regarding claims 2, 5, 8, 11, and 14, the user device including a TV or set-top box is disclosed in figure 1b, elements 151 and 152.

Regarding claims 3, 6, 9, and 12, the first data rate being around 30Mbps is disclosed in column 7, lines 42-43 (33.8 mbps is around 30). The second data rate being less than 100kbps is missing from McMullan. However, there is no support in the specification of the instant application for criticality of this value. It is generally considered to be within the ordinary skill in the art to adjust, vary, select, or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on the applicant. In re

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Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937), Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 417 (1943).

Regarding claim 15, the first data rate being around 20Mbps and the second data rate being around 25 Mbps is missing from McMullan. However, there is no support in the specification of the instant application for criticality of these numbers. It is generally considered to be within the ordinary skill in the art to adjust, vary, select, or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on the applicant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937), Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 417 (1943).

3. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over McMullan in view of Karawai.

Regarding claim 16, a headend coupled to the user device, a local information source coupled to the headend, a broadcast information source coupled to the headend, receiving a broadcast information stream including one or more packets unneeded by the user device, inserting one or more local packets in place of the unneeded packets to form a combined information stream, and transmitting the combined information stream to the user device is disclosed in column 1, lines 7-16, and column 2, lines 5-14. Claim 16 further specifies identifying blank packets received in the broadcast data stream and replacing them with local information, which is missing from McMullan. However, Karawai discloses in column 1, lines 45-50, replacing blank cells in a datastream with locally generated control information. It would have been

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obvious to one skilled in the art at the time of the invention to replace blank packets with local information packets. The motivation would be to reserve bandwidth for the local information packets (Karawai, column 1, lines 51-55).

Regarding claim 17, the user device including a TV or set-top box is disclosed in figure 1b, elements 151 and 152.

Regarding claim 18, the first data rate being around 30Mbps is disclosed in column 7, lines 42-43 (33.8 mbps is around 30). The second data rate being less than 100kbps is missing from McMullan. However, there is no support in the specification of the instant application for criticality of this value. It is generally considered to be within the ordinary skill in the art to adjust, vary, select, or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on the applicant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937), Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 417 (1943).

4. Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over McMullan in view of Williams in further view of Kawarai.

Regarding claims 21 and 22, identifying blank packets received in the broadcast stream and inserting one or more packets from the local information stream to replace the blank packets is missing from McMullan. However, Kawarai discloses in column 1, lines 45-50, replacing blank cells in a datastream with locally generated control information. It would have been obvious to one skilled in the art at the time of the invention to replace blank packets with local information packets. The motivation would

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be to reserve bandwidth for the local information packets (Karawai, column 1, lines 51-55).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia L Davis whose telephone number is (571) 272-3117. The examiner can normally be reached on 8:30 to 6, Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CLD

~~5/8/2005~~

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6/5/05



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